Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CORPORATION COUNSEL OF
THE CITY OF NEW YORK,

Petitioner,

-against-

ERIK M.,

A Person Alleged To Be A Juvenile Delinquent,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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November 8, 2000

QUESTION PRESENTED

Was the Fourth Amendment right to be free from unreasonable searches and seizures violated when police, acting in their community care-taking capacity to insure both timely notification to a suicide victim's next-of-kin and proper disposition of her remains, initiated a warrantless search for identifying information within the room she resided and died, and unexpectedly discovered contraband which led to the respondent's prosecution?

PARTIES TO THE PROCEEDING

Petitioner, the Corporation Counsel of the City of New York, was the Presentment Agency in this juvenile delinquency proceeding. Respondent, Erik M., was the person under sixteen years of age alleged to be a juvenile delinquent. The Legal Aid Society, Juvenile Rights Division, served as Respondent's law guardian throughout the lower court proceedings.

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ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

The Corporation Counsel of the City of New York respectfully petitions for a writ of certiorari to review the judgment of the New York State Supreme Court Appellate Division, First Department, in this case.

OPINIONS BELOW

The opinion and order from which Petitioner seeks certiorari is reported at 265 A.D.2d 256, 697 N.Y.S.2d 35 (1st Dept. 1999) and appears in the appendix at A-2. The opinion of the Family Court is unreported but appears in the appendix at A-4.

JURISDICTION

The Appellate Division judgment was entered on October 28, 1999. By order entered February 27, 2000, the New York State Court of Appeals, *sua sponte*, dismissed Petitioner's appeal which had been taken as of right (A-10). In an order entered May 25, 2000, the Appellate Division, First Department, denied Petitioner's motion seeking leave to appeal to the Court of Appeals (A-11). In an order entered September 5, 2000, the Court of Appeals denied Petitioner's motion seeking leave to appeal to that Court (A-12). Thus, the jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Pursuant to Article 3 of the New York State Family Court Act, a juvenile delinquency proceeding was initiated by the Presentment Agency against Respondent. A petition was filed, charging Respondent with committing acts which, had he been over the age of sixteen, would have constituted varying degrees of Criminal Possession of a Controlled Substance and Criminal use of Drug Paraphernalia, ranging from a class B felony to class A misdemeanors.

Through his law guardian, Respondent challenged the warrantless police search, seeking to preclude the physical evidence or, in the alternative, requesting a pre-trial Mapp hearing. Although the Presentment Agency opposed both applications, arguing that the search was initiated pursuant to the officers' community care-taking functions and was ministerial in nature, not designed to uncover evidence of criminality, the Family Court granted and conducted the pre-trial Mapp hearing.

The Suppression Hearing

At the Mapp hearing, Police Officer Michael Oliver, the responding officer who later arrested Respondent, was the sole testifying witness. He recalled the events leading to his recovery of the contraband as follows:

On the morning in question, Officer Oliver and his partner were on uniform duty and on patrol in their patrol car. At approximately eight o'clock a.m., they received a radio transmission from the Police Department's central dispatcher, alerting them to an emotionally disturbed person at the subject address. As they proceeded to the location, they received another radio transmission informing them that the person may have hung herself. At that point, pursuant to routine police procedures for responding to possible suicide scenes, the dispatcher also summoned a sergeant to the scene.

Upon arriving at the apartment, Officer Oliver was greeted by Respondent's father, whose native tongue is

Spanish. The father ushered him into the apartment and led him to a partially closed door. Through his body movements, the father made clear that he did not want to accompany the officer into the room. Thus, the officer entered the room alone, whereupon he observed a young dead woman hanging from the inside of the door. The officer looked around the bedroom, which contained a single bed and dresser with a mirror, but saw no evidence of foul play or criminality.

Concluding that the decedent had committed suicide, Officer Oliver exited the bedroom and joined Respondent and his family in the kitchen, where they had gathered. For the next five minutes, Officer Oliver attempted to gather the victim's pedigree information from the family. All he was able to ascertain, however, was that the victim had been living with Respondent and his family for approximately one month, during which time she resided in Respondent's bedroom, the same room in which she took her life. The two had briefly dated, though their relationship ended during the course of her stay. Respondent thought that her first name may have been Lilly, but he was unsure. They did not know her family name, nor did they know anything about her family. They suggested that the victim may have carried a pocketbook or school identification containing her true name and last known address.

Once it became clear that Respondent and his parents could not adequately identify the victim, Officer Oliver and his partner re-entered the bedroom to search for identifying information, such as the victim's pocketbook or any form of identification she may have carried. Upon opening the top drawer of the dresser, Officer Oliver immediately observed drugs, which later tested positive for cocaine, along with drug paraphernalia and a sum of currency. The items were ultimately seized and Respondent arrested.

Both parties rested at the close of Officer Oliver's testimony. During summations, Respondent argued that the warrantless search violated his Fourth Amendment rights because the officer lacked probable cause to believe that a crime was committed or that exigent circumstances

existed. The Presentment Agency countered that the officer was not engaged in a criminal investigation, that the room was never considered a crime scene, and that the officer acted reasonably. Thereafter, the Family Court denied Respondent's motion to suppress the evidence, finding that the search was administrative in nature and reasonable under the circumstances.

The Fact-Finding and Dispositional Hearings

Officer Oliver again testified on behalf of the prosecution at the fact-finding hearing. The sole witness called on Respondent's behalf was his mother. At the hearing's end, the Family Court found the officer's testimony entirely credible and that of Respondent's mother "bordering on perjurious." The court then issued findings to every count in the petition, with the exception of one previously withdrawn by the Presentment Agency.

At the dispositional hearing, Respondent was adjudicated a juvenile delinquent in need of supervision, treatment and confinement. He was placed with the Division For Youth, in a limited secure facility, for an initial period of up to fifteen months, with a specific directive that he be confined therein for a minimum of six months.

The Appellate Division Decision and Order

Respondent appealed to the Appellate Division, First Department, arguing that the Family Court erred in denying Respondent's motion to suppress the physical evidence, as the officers lacked probable cause and/or exigent circumstances to conduct the warrantless search. The Presentment Agency countered that the search was administrative in nature, undertaken in advancement of the police care taking function to identify dead human bodies and to ensure both timely notification to the next-of-kin and proper disposition of the body and personal effects. As such, it argued, that the search was initiated without a search warrant was completely irrelevant to the legality of the search. The Presentment Agency urged the Appellate Division to instead focus on:

> assess[ing] the reasons for the search and the extent to which it intrude[d] on legitimate privacy interests to determine whether, on balance, the government's action [was] reasonable.

Patchogue-Medford Congress of Teachers v. Bd. of Ed., 70 N.Y.2d 57, 68, 517 N.Y.S.2d 456 (1987) (citing People v. Scott, 63 N.Y.2d 518, 525, 483 N.Y.S.2d 649 (1984) and People v. John BB., 56 N.Y.2d 482, 487, 453 N.Y.S.2d 158, cert. den., 459 US 1010 (1982).

In reversing the Family Court's orders, the Appellate Division failed to engage in this analysis, choosing instead to baldly conclude that the search did not "fall within the parameters of the exception [to the warrant requirement] permitting warrantless searches for administrative purposes" and holding that a warrant should have been obtained (A-3). The court relied upon three federal cases to support its decision,[1] none of which were on point but all of which utilized the balancing test advocated by the Presentment Agency and discounted by the Appellate Division.

Subsequent Procedural History

Respondent served Petitioner with the Appellate Division order with notice of entry on or about November 5, 1999. Pursuant to New York State Civil Practice Law and Rules ("CPLR") §5501(b), a timely appeal was initiated, as of right, to the New York State Court of Appeals. By order dated February 27, 2000 and reported at 94 N.Y.2d 898, 707 N.Y.S.2d 142 (2000), the Court of Appeals dismissed the appeal, *sua sponte*. The order was served with notice of entry on or about March 6, 2000. Pursuant to CPLR §5514(a), Petitioner next sought

[1] New York v. Burger, 482 U.S. 691 (1987); Donovan v. Dewey, 452 U.S. 594 (1981); and Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967) (all involving warrantless inspections designed to enforce regulatory schemes carrying civil and/or criminal sanctions for non-compliance).

permission for leave to appeal to the Court of Appeals in a motion before the Appellate Division, First Department. That motion was denied on May 25, 2000 and a copy of the order with notice of entry was served on or about June 6, 2000. (__ A.D.2d __, __ N.Y.S.2d __ (1st Dept. 2000)). Finally, in a motion dated June 15, 2000, Petitioner requested permission for leave to appeal to the Court of Appeals from that Court. In an order dated September 5, 2000, the motion was denied. (__ N.Y.2d __, __ N.E.2d __(2000)). A copy of the order, with notice of entry, was served on or about September 21, 2000.

REASON FOR GRANTING THE PETITION

This case presents a unique opportunity to squarely address the profound differences between police intrusions initiated in furtherance of community care-taking functions from those undertaken in advancement of law enforcement objectives. The lack of judicial guidance in recognizing and appreciating the distinct expectations, motivations, and orientations associated with each has here resulted in a complete disregard for this Court's instruction that "[w]here a careful balancing of governmental and private interests suggests that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause," such standard should be adopted. New Jersey v. T.L.O., 469 U.S. 325, 341 (1985). Indeed, the Appellate Division's holding in this case represents a growing and disturbing trend throughout the nation:

> Courts have often assumed that the warrant preference theory's presumptive probable cause and warrant requirements apply to community caretaking intrusions by police. They have commonly held that warrantless intrusions can be justified only when they fall within variously stated "exigent circumstances," "emergency," or "rescue" exceptions to this framework. These exceptions, however, accommodate only a portion of the factual circumstances in which police have traditionally intruded on private space to keep the peace, to protect people and property from perceived threats,

> or to render assistance to those in need. More fundamentally, the warrant preference theory itself affords at best an awkward language for assessing the constitutional reasonableness of such intrusions.

Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U Chi Legal F 261, 263 (1998) (Footnotes and citations omitted). Should this trend continue, every state's ability to promote public welfare will be unjustifiably curtailed.

In this case, the Appellate Division had no basis to conclude that the underlying search was initiated for law enforcement purposes. To the contrary, the uncontested facts unequivocally demonstrate that the search was motivated by the purely benign care-taking objectives of the police officers involved. Respondent himself invoked the Police Department's generally accepted community care-taking role by calling for assistance with the removal of a suicide victim's body from his home. Throughout the proceedings below, Respondent conceded that the victim's death was an obvious suicide and never challenged the officer's ability to determine same. He never alleged that the search was subterfuge for a criminal investigation, nor did he argue that police suspected a crime had been committed. To the contrary, Respondent accepted and adopted the officer's stated purpose behind initiating the search, which was to locate identifying information belonging to the victim, such as her pocketbook or school identification card, in an effort to determine her true name and last known address. He neither contested that these items were targeted based on information he and his family provided to the officer, nor did he question the officer's assumption that these items would be located in Respondent's room, the very room in which the victim had lived and taken her life.[2]

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[2] The officer's assumption that the victim's belongings would be in that room is consistent with the reasoning articulated in those cases bestowing a legitimate expectation of privacy to overnight guests and affording them standing to contest the legality of warrantless searches

Where, as here, the record is devoid of facts tending to suggest that a police intrusion was initiated for purposes of uncovering evidence of criminality, and where, as here, the action itself was so "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," Cady v. Dombrowski, 413 U.S. 433, 441 (1973), it is error to invoke a probable cause type analysis rather than one grounded in reasonableness, the actual benchmark for Fourth Amendment protections against searches and seizures. Indeed, "courts have held--and quite correctly--that search warrants are not required [for searches unrelated to law enforcement], linked as the warrant requirement textually is to the probable cause concept." South Dakota v. Opperman, 428 U.S. 364, 371 (1976). Thus, "[t]he standard of probable cause is peculiarly related to criminal investigations, not routine, non-criminal procedures" of the type presented at bar. Id. at 370-371, n. 5; Florida v. Jimeno, et. al., 500 U.S. 248 (1991); see Brinegar v. U.S. 338 U.S. 160, rehg. den., 338 U.S. 839 (1949); Agnello v. U.S., 269 U.S. 20 (1925); See also People v. Pinchback, 82 N.Y.2d 857, 631 N.E.2d 100 (1993); People v. Bigelow, 66 N.Y.2d 417, 488 N.E.2d 451 (1985); People v. Mendez, 199 A.D.2d 182, 605 N.Y.S.2d 94 (1st Dept. 1993), app. den., 83 N.Y.2d 874, 635 N.E.2d 303 (1994). Consequently, the constitutionality of the search at bar, both benevolent and benign in nature, must rest on the reasonableness of the police action, which is determined by "...weighing the governmental and societal interests being advanced against the individual's right to be free from arbitrary interference by law enforcement officers." People v. Galak, 80 N.Y.2d 715, 718, 610 N.E.2d 362 (1993) (citing U.S. v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)); Illinois v Lafayette, 462 U.S. 640 (1983), mot. granted, pet. den., 468 U.S. 1213 (1984); see also People v. Mitchell, 39 N.Y.2d 173, 179, 347 N.E.2d 607, cert. den., 426 U.S. 953 (1976); People v. Gonzalez, 62 N.Y.2d 386, 390, 465 N.E.2d 823 (1984).

In this case, for example, notwithstanding the Appellate Division's categorical rejection of this analytical

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of their rooms. E.g. Minnesota v. Olson, 495 U.S. 91 (1990).

approach, the Family Court recognized the strong governmental and societal interest "in determining the identity of the deceased minor" for purposes of notifying her next-of-kin and ensuring the proper disposition of her remains (A-5). This determination is well grounded in state law. In New York, "[t]he law is well settled that the surviving next of kin have a right to the immediate possession of the decedent's body for preservation and burial and that damages will be awarded against any person who unlawfully interferes with that right or improperly deals with the decedent's body [citations omitted]." Finn v. City of New York, 76 Misc.2d 388, 389 (App. Term, 1st Dept. 1973); see Darcy v. Presbyterian Hospital, 202 N.Y. 259, 95 N.E. 695, rehg. den., 203 N.Y. 547, 96 N.E. 1113 (1911); Stahl v. Necker, 184 App. Div. 85 (1st Dept. 1918); see also People v. Ringe, 197 N.Y. 143, 171 N.Y.S. 728 (1910). In fact, New York law requires that "those who deal with [dead] bod[ies] do so with due regard for the feelings and beliefs of the next of kin." Cf. Kohn v. United States, 591 F.Supp. 568, 573 (EDNY 1984), affd., 760 F.2d 253 (2d Cir. 1985). As for the governmental agency charged with taking custody of unidentified or unclaimed corpses and securing them against loss or theft pending identification and disposition, this community care-taking responsibility has long been relegated to police. See People v. Ringe, 197 N.Y. 143, 90 N.E. 451 (1910). It is also "the New York City Police Department...under the system in effect in New York City...[through] which notification of death is given to the family or next of kin." Finn v. City of New York, 70 Misc.2d 947 (1972), revd. on other grounds, 76 Misc.2d 388 (App. Term 1st Dept. 1973). Based on these presidents, there was overwhelming support for the Family Court's decision that there exists a strong governmental and societal interest in identifying suicide victims for purposes of notifying their next-of-kin and ensuring proper disposition of their remains.

Once the Family Court isolated the governmental interest involved, it proceeded to balance that interest against Respondent's Fourth Amendment rights. In so doing, the court correctly concluded that the search, undertaken to further the community care-taking objective of identifying dead human bodies, outweighed Respondent's rights and was therefore "a proper procedural

measure" (A-5). In engaging this balancing test, the Family Court analogized the competing interests at bar to those involved in police inventory searches, a well recognized administrative search excepted from the warrant requirement. E.g., Colorado v. Bertine, 479 U.S. 367, 371-372 (1987); Illinois v. Lafayette, 462 U.S. 640 (1983); South Dakota v. Opperman, 428 U.S. 364 (1976). Although the Appellate Division categorically rejected the Family Court's comparison of this case to those "fall[ing] within the parameters of a valid inventory search," the similarities between the two are immediately evident. In inventory searches, the governmental interest forwarded involves "protecting an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." Colorado v. Bertine, 479 U.S. 367, 371-372 (1987). In this case, the governmental interest involved protecting a corpse, while in police custody, to insure against claims of untimely notification to the next-of-kin, improper preservation and/or burial, and unlawful interference with a survivor's rights. Both intrusions involve benign care-taking functions of the State, undertaken to protect individuals, to preserve property, and insure against legal claims for damages. Neither is motivated by, or designed to further, a criminal investigation.[3] Thus, since it has long been held that an individual's privacy rights are outweighed by the government's interest in inventorying property for purposes of protecting an owner's property and limiting police liability, so too must the government's interest in identifying decedents for purposes of ensuring proper disposition of the remains, timely notification to the next-of-kin, and limiting potential liability for related legal claims outweigh the Respondent's privacy rights in this case.

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[3] The only significant distinction is that inventory searches often precede the property owner's arrest, thereby implicitly heightening the likelihood of police either specifically seeking or inadvertently finding evidence of criminality, whereas the search at bar was undertaken in the complete absence of such odds and/or suspicion.

Rather than addressing the Family Court's analysis, the Appellate Division jumped to the conclusion that this case did "not fall within the parameters of the exception permitting warrantless searches for administrative purposes." (A-3). Of the three federal cases the Appellate Division chose to cite in support of this result, each involved warrantless inspection programs easily distinguishable from the intrusion at bar based upon their distinct purpose, randomness, and likely result. The governmental interest identified in each of those cases involved enforcing municipal codes, statutory schemes, and regulations. Inspection cite locations were targeted on an *ad hoc* basis and inspectors were naturally predisposed to searching for violations and issuing citations and sanctions therefor. See, e.g., New York v. Burger, 482 U.S. 691, 704 (1987) (enforcement of New York Vehicle and Traffic Law §415-a(5), violations of which constitute class A misdemeanor); Donovan v. Dewey, 452 U.S. 594, 606 (1980) (enforcement of Federal Mine Safety and Health Act of 1977 §103(a), violations of which result in civil penalties); Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967) (enforcement of San Francisco Housing Code §503, et. al., violations of which result in fine and/or imprisonment).[4] In this case however, the governmental interest involved identifying dead human bodies to insure timely notification to the next-of-kin and proper disposition of the decedent's person and property. Searching respondent's room for the victim's identity was narrowly tailored to that end and a proper exercise of police discretion. The officers had no intention of, or reason to foresee, uncovering evidence likely to result in respondent's arrest and prosecution. Thus, while the similarity in purpose and intended outcome between inspection programs and general law enforcement may

[4] Respondent has previously cited cases distinguishable on the same basis. E.g. Marshall v. Barlow's, Inc., 436 U.S. 307, 313 (1978) (warrantless inspection of business premises pursuant to section 8(a) of the Occupational Safety and Health Act of 1970); Sokolov v. Village of Freeport, 52 N.Y.2d 341, 346-347, 420 N.E.2d 55 (1981) (warrantless inspection of residential rental property pursuant to a Rental Permit Ordinance).

justify obtaining a warrant prior to inspecting commercial or private property, the same result is far from logical, let alone proper, for the benign intrusion at bar undertaken in furtherance of a benign community care-taking objective.

Respondent has relentlessly pursued an equally unavailing argument, analogizing this case to those involving warrantless searches initiated during criminal investigations. E.g., Flippo v. West Virginia, 528 U.S. 11 (1999) (homicide and assault); Minnesota v. Olson, 495 U.S. 91 (1990) (armed robbery); Arizona v. Hicks, 480 U.S. 321 (1987) (shooting investigation); Thompson v. Louisiana, 469 U.S. 17 (1984) (homicide investigation); Payton v. New York, 445 U.S. 573 (1980) (arrest inside home); Mincey v. Arizona, 437 U.S. 385 (1978) (homicide investigation); McDonald v. United States, 335 U.S. 451 (1948) (illegal lottery); People v. Cohen, 58 N.Y.2d 844, 446 N.E.2d 774, cert. den., 461 U.S. 930 (1983) (murder investigation), People v. Knapp, 52 N.Y.2d 689, 422 N.E.2d 531 (1981) (illegal drug sale investigation); People v. Hodge, 44 N.Y.2d 553, 378 N.E.2d 99 (1978) (fatal stabbing); People v. Mitchell, 39 N.Y.2d 173, 347 N.E.2d 607, cert. den. 426 U.S. 953 (1976) (investigation of missing person believed to be in danger). Each of those searches occurred at a crime scene, were initiated pursuant to a criminal investigation and/or after the commission of a crime, and were designed to uncover evidence of criminality to be introduced during a criminal trial. Such distinctions easily distinguish those cases from the one at bar. Furthermore, since there was no reason for police to believe that a crime was committed, a regulatory scheme violated, or that evidence thereof existed, there would have been no basis from which to swear out a warrant in the first instance.[5]

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[5] Even if, *arguendo*, a warrant could have been secured based on the facts presented here, "the real question is not what 'could have been achieved', but whether the Fourth Amendment require[d] such steps." Illinois v. Lafayette, 462 U.S. 640, 647 (1983). Courts "are hardly in a position to second guess police departments as to what practical administrative method will best [advance their goals]." Id. at 648.

In sum, this case presents a rare opportunity to directly address the wide range of care-taking functions undertaken by police on a daily basis and to articulate a clear standard for assessing such police undertakings. Society has come to expect local police departments

> to aid those in danger of physical harm, to preserve property, or 'to create and maintain a feeling of security in the community.' [They are expected to facilitate] things like the mediation of noise disputes, the response to complaints about stray and injured animals, and the provision of assistance to the ill or injured. Police [are] frequently [expected to] 'care for those who cannot care for themselves: the destitute, the inebriated, the addicted...and the very young.' They are often charged with taking lost property into their possession; [and] they not infrequently see to the removal of abandoned property...[6]

Precisely because these benevolent community care-taking activities have now long been relegated to local police, the need for a clear standard of constitutional review has never been more compelling. The potential ramifications of the Appellate Division's ruling are far reaching. Not only does it undermine traditional notions of Fourth Amendment analysis, but it perpetuates the inaccurate identification and assessment of benign police activities by other courts. If left unchecked, the states' interest in promoting public welfare will be abridged and law enforcement agencies nation-wide will suffer its chilling effect.

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[6] Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U Chi Legal F 261, 272 (1998) (footnotes and citations omitted).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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*Counsel of Record

November 8, 2000

APPENDIX

IN RE ERIK M., A PERSON ALLEGED TO BE A JUVENILE DELINQUENT, APPELLANT.

- - - - -

PRESENTMENT AGENCY, RESPONDENT.

1309, 1310, 1311

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

October 28, 1999

COUNSEL:
For Appellant: Monica Drinane, The Legal Aid Society, Juvenile Rights Division, by Raymond E. Rodgers.

For Respondent: Michael D. Hess, The New York City Corporation Counsel, by Sharyn Rootenberg.

JUDGES:
Ellerin, P.J., Tom, Wallach, and Friedman, JJ.

DECISION:

Order of disposition, Family Court, New York County (Gloria Sosa-Litner, J.), entered on or about February 3, 1997, which adjudicated appellant a juvenile delinquent and placed him with the Division for Youth for a period of 15 months upon a fact-finding determination that appellant committed acts which, if committed by an adult, would constitute criminal possession of a controlled substance in the third, fifth and seventh degrees and criminal use of drug paraphernalia in the second degree, unanimously reversed, on the law and the facts, without costs, the motion to suppress granted, and the petition dismissed. Appeals from orders, same court and Judge, entered on or about January 24, and February 19, 1997, unanimously dismissed, without costs.

It is a basic tenet of constitutional law that, absent a search warrant, a search is unreasonable unless it falls within one of the specifically recognized exceptions to the warrant requirement. (People v. Hodge, 44 N.Y. 2d 553,

557). The presentment agency argues that the police conduct in this case falls within the scope of one of those exceptions, namely, that it was a permissible administrative search. We cannot agree.

The search at issue in this case, which was rooted in the investigation of the apparent suicide of a young woman, does not fall within the parameters of the exception permitting warrantless searches for administrative purposes (see, New York v. Burger, 482 U.S. 691; Donovan v. Dewey, 452 U.S. 594; Camara v. Municipal Court of San Francisco, 387 U.S. 523). Nor can it be said that there was any exigency justifying a warrantless search since the police could easily have secured the apartment and obtained a warrant. Additionally, contrary to the conclusion of the Family Court, this search did not fall within the parameters of a valid inventory search (see, Illinois v. Lafayette, 462 U.S. 640; South Dakota v. Opperman, 428 U.S. 364).

Accordingly, since the presentment agency has failed to demonstrate that the search in this case fell within any recognized exception to the warrant requirement, suppression of the items found in appellant's dresser drawer is mandated.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of

ERIK MORALES,

A Person Alleged to be a Juvenile Delinquent,

Respondent.

Docket Number D-11626/96
DECISION AND ORDER

SOSA-LITNER, J.F.C.:

This juvenile delinquency petition was commenced by the filing of a petition on October 18, 1996. The Respondent's application for a pre-trial suppression hearing was granted on October 30, 1996 and the Mapp hearing itself was heard on November 19, 1996.

Now, after reviewing the case law submitted by both counsel and considering the testimony of the arresting officer and the arguments offered by counsel during summations, the Respondent's motion to suppress the physical evidence recovered from his room is denied.

Briefly, the police were summoned to the Respondent's home by his parents on October 18, 1996 to investigate the suicide of the Respondent's girlfriend in his bedroom. Although the Respondent and his father informed the police that the girl had been staying in the respondent's room for approximately one month, neither the Respondent nor his parents could provide the police with the deceased girl" full name, address or guardian. In order to make a complete identification of the deceased, Police Officer Michael Oliver proceeded to look through the Respondent's room in an attempt to locate a handbag or some form of identification. The first place he looked was in the Respondent's top dresser drawer, where he

immediately observed two bags containing large quantities of cocaine, more than 75 empty crack vials, and $377.00 in cash.

Counsel for the Respondent argues that the search was made in violation of the Respondent's constitutional and statutory rights since it was conducted without a search warrant, without probable cause, without consent of the Respondent or his parents and in the absence of exigent circumstances. Counsel for the Presentment Agency argues that the search was an inventory search, and therefore an exception to the warrant requirement. See, Colorado v. Bertine, 479 U.S. 367, 107 S.Ct. 738 (1987).

The Court agrees with the Presentment Agency that the search was an inventory search, and further holds that it was proper based on the consent of the Respondent's parents.

Inventory searches are permitted without a warrant because the government has justifiable interests in protecting an individual's property during the course of a necessary police investigation, in protecting the Police Department from false claims arising from those investigations and insuring the safety of the police officers during the investigation. People v. Galak, 594 NYS2d 689 (1992). Although inventory searches are traditionally conducted of an automobile or other movable property after the an arrest [sic], the same rationale permits that permits [sic] the police to search that property allows the police to search a secured area that cannot otherwise be impounded. See, People v. Dancey, 443 NYS2d 776 (2d Dept. 1981), permitting the "safeguarding" of an apartment as a crime scene. There can be no question that the police had a legitimate interest in determining the identity of the deceased minor and that the room had to be secured as the scene of a death. Consequently, the police action in looking into the Respondent's dresser drawer was a proper procedural measure.

The search was also conducted according to standardized Police Department regulations as required by the Court of Appeals in People v. Galak, supra. See also, People v. Gonzalez, 477 NYS2d 103 (1984); Compare,

People v. Townsend, 544 NYS2d 349 (1st Dept. 1989). The Presentment Agency offered into evidence relevant portions of the Police Department's "Patrol Guide" which instructs the police to search both the body and the premises whenever a dead human body is discovered at a location other than his or her residence. See, Petitioner's Exhibit 1.

Although Officer Oliver testified that the Respondent and his father had informed the police that the deceased had been staying with the Respondent for "about a month," the transitory nature of her existence precludes a finding that the case address was her "home." The Respondent or his parent's [sic] informed the police that the decedent's mother may have been incarcerated out-of-state and that the decedent had lived or "was staying" with friends or family on 135th Street in Manhattan. The Respondent's parents were not the decedent's guardians, were not legally responsible for her care and were allegedly not even sure of her real name. As such, it was proper for Police Officer Oliver to follow the procedures proscribed for bodies found outside of the decedent's home.

Officer Oliver was merely performing this ministerial duty when he discovered the illicit drugs. Police Officer Oliver was not looking for contraband and credibly testified that he did not suspect foul play at that stage of his involvement. He had no reason to suspect that he would discover crack cocaine in the dresser and the Court finds no reason the [sic] doubt his veracity on that point. Moreover, the contraband was discovered in the very first place Officer Oliver looked. The search was narrow in scope, reasonable under the circumstances, and did not constitute an undue intrusion upon the Respondent's privacy. Illinois v. Lafayette, 462 U.S. 640, 103 S.Ct. 2605, 77 L.Ed.2d 65; Compare, Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), where the Supreme Court suppressed contraband discovered during the course of a four-day search of the Defendant's home which included emptying clothes pockets, digging bullet fragments out of a wall, and pulling up sections of the carpet for analysis.

Finally, the Court also finds that the Respondent's parents consented to the search. They notified the police when they discovered a dead body in their son's room and sought police assistance in their home to deal with the situation. Police Officer Oliver's search for the identity of the deceased "constituted no more of an intrusion into (respondent)'s privacy than did the legitimate presence of the police" initially. People v. Dancey, supra, 443 NYS2d at 778.

Consequently, the Court finds that the search was proper and denies the Respondent's motion to suppress the physical evidence recovered from the Respondent's room. Parties are directed to be ready for trial.

This constitutes the order of this Court.

Enter:

/s/
Hon. Gloria Sosa-Lintner, J.F.C.

Dated: New York, NY
December 5, 1996

At a term of the Family Court of the State of New York, held in and for the County of New York, at 60 Lafayette St., New York, NY 10013, on February 03, 1997

PRESENT: Hon. GLORIA SOSA-LITNER
Judge

In the Matter of

ERIK MORALES,

A Person Alleged to be a Juvenile Delinquent,

Respondent.

Docket Number D-11626/96
ORDER OF DISPOSITION

An Order of Fact-finding dated the 24th day of January, 1997, having been entered in the Family Court of New York County adjudging that the Respondent herein did the following act(s):

acts as described in count 1 and counts 3 through 6 of the petition; and

The matter having thereafter duly come on for a dispositional hearing before the Court, and the Court, after having made an examination and inquiry into the facts and circumstances of the case and after making reports available to counsel in accordance with section 351.1 of the Family Court Act, finds upon a preponderance of the evidence that the Respondent requires supervision, treatment, or confinement; and

The Court, having fully considered the matter of a particular disposition pursuant to section 352.2 of the Family Court Act, finds that the Respondent requires confinement for the following reasons: see record; and it appearing that:

Continuation in respondent's home would be contrary to the need to protect the community and reasonable efforts to eliminate the need for removal of the respondent from home were not made because such efforts are inappropriate under the circumstances[;]

Now therefore, upon the findings made in the fact-finding and dispositional hearings herein and upon all proceedings had herein, it is hereby

ORDERED and ADJUDGED that the above-named respondent is a juvenile delinquent on the ground that Respondent, while under sixteen years of age, did act(s) which if done by an adult would constitute the crime(s) of: [Criminal Possession of a Controlled Substance ("CPCS")] 3, CPCS 7, CPCS 5 (2 counts), and Criminally Using Drug Paraphernalia 2; and on the further ground that the Respondent requires supervision, treatment, or confinement; and it is therefore

ORDERED that this proceeding be and the same is continued and the Respondent be and hereby is placed for a period of 15 months less the period spent in detention pending disposition in the custody of the New York State Division for Youth for placement with DFY Limited Secure, 6 months minimum, to run concurrently with 30-D-14168/96, subject to further orders of this Court. In the event the New York Division for Youth is unable to place the child in accordance with the direction hereof, or in the event the placement with the authorized agency is discontinued, the Division for Youth shall apply to the Court for an order to stay, modify, set aside, or vacate such directive pursuant to section 355.1 of the Family Court Act.

and it is further

ORDERED Respondent must receive counselling [sic].

Dated: February 03, 1997

ENTER:

/s/
Hon. Gloria Sosa-Lintner, J.F.C.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-second day of February 2000

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 156 SSD 5

In The Matter of Erik M., A Person Alleged to be a Juvenile Delinquent,

Respondent.

Presentment Agency,

Appellant.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

/s/ Stuart M. Cohen
Clerk of Court

At a Term of the Appellate Division of the Supreme Court held in and for the First judicial Department in the County of New York on May 25, 2000

Present - Hon. Peter Tom, Justice Presiding,
Betty Weinberg Ellerin
Richard W. Wallach
David Friedman, Justices.

In re Erik M.,

A Person Alleged to be a Juvenile Delinquent,

Appellant.

Presentment Agency

M-2125
Docket #11626/96

The presentment agency having moved for leave to appeal to the Court of Appeals from the decision and order of this Court entered on October 28, 1999 (Appeal Nos. 1309-1311),

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTER:

/s/Catherine O'Hagan Wolfe

Clerk.

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fifth day of September 2000

Present, HON. JUDITH S. KAYE, Chief Judge, presiding.

Mo. No. 766

In The Matter of Erik M., A Person Alleged to be a Juvenile Delinquent,

Respondent.

Presentment Agency,

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/s/ Stuart M. Cohen
Clerk of Court

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ORIGINAL

Supreme Court, U.S.
FILED
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No. 00-819
IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

THE CITY OF NEW YORK,

Petitioner,

-v-

ERIK M.,

Respondent.

On Petition for Writ of Certiorari to the
New York State Supreme Court Appellate Division, First Department

MOTION TO PROCEED IN FORMA PAUPERIS

Respondent Erik M. asks leave to file the attached Brief in Opposition to a Petition for Writ of Certiorari and to proceed in forma pauperis. Respondent has been granted leave so to proceed in the state courts of New York. Respondent's affidavit in support of this motion is attached hereto.

MONICA DRINANE
Attorney for Respondent
THE LEGAL AID SOCIETY
Juvenile Rights Division
90 Church Street, 15th Floor
New York, New York 10007
(212) 577-3544

Raymond E. Rogers

RAYMOND E. ROGERS*
Of Counsel
*Counsel of Record
December 20, 2000

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25 pp

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

----------X

THE CITY OF NEW YORK,	:	No. 00-819
Petitioner	:	
-v-	:	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS
ERIK M.,	:	
Respondent.	:	
	:	

----------X

INSTRUCTIONS

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

AFFIDAVIT IN SUPPORT OF MOTION

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Erik Moats

Date: 12-04-00

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months	Amount expected next month
	You	You
Employment	$ N/A	$ N/A
Self-employment	$ N/A	$ N/A
Income from real property (such as rental income)	$ N/A	$ N/A
Interest and dividends	$ N/A	$ N/A
Gifts	$ N/A	$ N/A
Alimony	$ N/A	$ N/A
Child support	$ N/A	$ N/A
Retirement (such as social security, pensions, annuities, insurance)	$ N/A	$ N/A
Disability (such as social security, insurance payments)	$ N/A	$ N/A
Unemployment payments	$ N/A	$ N/A
Public-assistance (such as welfare)	$ N/A	$ N/A
Other (specify): _____	$_____	$_____
Total monthly income:	$ N/A	$ N/A

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
N/A			

4. How much cash do you and your spouse have? $ see attached

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
		$	$
		$	$
		$	$

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)
N/A	N/A	Make & year: N/A
		Model:
		Registration #:

Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year:		
Model:		
Registration #:		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A		

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ N/A	$ N/A
Are real-estate taxes included? [ ] Yes [ ] No		
Is property insurance included? [ ] Yes [ ] No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	$ N/A	$ N/A
Home maintenance (repairs and upkeep)	$ N/A	$ N/A
Food	$ N/A	$ N/A
Clothing	$ N/A	$ N/A
Laundry and dry-cleaning	$ N/A	$ N/A
Medical and dental expenses	$ N/A	$ N/A
Transportation (not including motor vehicle payments)	$ N/A	$ N/A
Recreation, entertainment, newspapers, magazines, etc.	$ N/A	$ N/A
Insurance (not deducted from wages or included in Mortgage payments)	$ N/A	$ N/A
Homeowner's or renter's	$ N/A	$ N/A
Life	$ N/A	$ N/A
Health	$ N/A	$ N/A
Motor Vehicle	$ N/A	$ N/A

Other: _____	$ N/A	$ N/A
Taxes (not deducted from wages or included in Mortgage payments) (specify): _____	$ N/A	$ N/A
Installment payments	$ N/A	$ N/A
Motor Vehicle	$ N/A	$ N/A
Credit card (name): _____	$ N/A	$ N/A
Department store (name): _____	$ N/A	$ N/A
Other: _____	$ N/A	$ N/A
Alimony, maintenance, and support paid to others	$ N/A	$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ N/A	$ N/A
Other (specify): _____	$ N/A	$ N/A
Total monthly expenses:	$ N/A	$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?
[ ] Yes [X] No If yes, describe on an attached sheet.

10. Have you paid--or will you be paying--an attorney any money for services in connection with this case, including the completion of this form? Yes (No)
If yes, how much? $_____
If yes, state the attorney's name, address, and telephone number:

NO

11. Have you paid--or will you be paying--anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

[ ] Yes [X] No
If yes, how much? $_____
If yes, state the person's name, address, and telephone number:

NO

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.
Clinton Correctional Facility Annex
Dannemora, NY 12929
Your daytime phone number: 518 - 492-2511
Your age: 20 Your years of schooling: GED
Your social-security number: _____

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209-INMATE BALANCE SCREEN

PHONE: (518) 492 2511 EXT: 2000
FAX: (518) 492 2511 EXT: 2099
CURRENT FACILITY: CLINTON

NYSID: 88518120
DOB: 11/06/80
FULL NAME: MORALES ERIK
DIN: 00A1614

SPENDABLE BALANCE: 0.00

ENCUMBRANCES	
TOTAL:	155.00
COLLECTED:	55.68
OUTSTANDING:	99.32

	SPENDABLE FOR LAST SIX MONTHS	TOTAL DEPOSITS FOR LAST SIX MONTHS
OLDEST	4.63	15.60
"	4.61	9.92
"	2.67	16.00
"	2.35	12.40
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INMATES ACCOUNTS

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No. 00-819

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

THE CITY OF NEW YORK,

Petitioner,

-v-

ERIK M.,

Respondent.

On Petition for Writ of Certiorari to the
New York State Supreme Court Appellate Division, First Department

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MONICA DRINANE
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Of Counsel

*Counsel of Record

December 20, 2000

QUESTION PRESENTED

Whether the warrantless and non-consensual search of the respondent's closed bedroom dresser drawer violated the Fourth and Fourteenth Amendments to the United States Constitution, where the sole justification for the police action was the investigation of a suicide that occurred in the bedroom.

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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 2000

THE CITY OF NEW YORK,	:	No. 00-819
Petitioner,	:	
-v-	:	
ERIK M.,	:	
Respondent.	:	
	:	

STATEMENT OF THE CASE

On October 22, 1996, the Corporation Counsel of the City of New York (the petitioner in this Court) filed a juvenile delinquency petition in New York County Family Court charging the then fifteen-year-old respondent, Erik M., with the commission of six delinquent acts regarding the possession of crack cocaine discovered as the result of an October 18, 1996, police search of a closed dresser drawer in the respondent's bedroom. On October 23, 1996, the respondent filed a motion to suppress all evidence the police had obtained as a result of the search of the bedroom on the ground the search and seizure violated the federal constitution and state law.

At the suppression hearing held in New York County Family Court on November 19, 1996, New York City Police Officer Michael Oliver, who at the time of the hearing had been a member of the force for three years and had been stationed in the 30th Precinct for over a year, testified that on October 18, 1996, at 8:00 a.m., he was in a marked patrol car with his partner (Steven Helman), both in uniform, when they received a radio run regarding an emotionally disturbed person at 602 West 137th Street, apartment 27, in Manhattan (A4-6, 20, 27-28).* On their way to the location, the radio dispatcher clarified that the purpose of the run was a report of a suicide by hanging at that address (A5). When they arrived at that address a few minutes after 8:00 a.m., respondent's father opened the door to the apartment and let the officers inside (A6, 20). Inside the apartment, the officer also saw respondent and his mother and brother (A7). Officers Oliver and Helman were the first members of the force to arrive, and they were joined by at least four other police officers, including a sergeant (A21). Neither Officer Oliver nor Officer Helman nor the police sergeant who arrived speaks Spanish, the principal language spoken by

*Parenthetical citations refer to the pages of the transcripts of the suppression hearing held in the New York County Family Court on the following dates: A--11/19/96 (36-page session before recall of case) and B--11/19/96 (23-page session after recall of case).

respondent's parents (A22-23). Officer Carrasco, the Youth Officer at the 30th Precinct, arrived at the apartment shortly after Officer Oliver, and an Officer Sanchez also came to the apartment (A25-26).

Respondent's father led the officers to a room in the apartment where he struggled to push the door open, put his head inside the room, and then stepped away from the door with tears in his eyes (A7). Officer Oliver entered that room and observed "a young woman who was hanging from the door" and who was "apparently dead" (A8). Officer Oliver looked around the room for "any signs of foul play" but saw none (A8). It appeared to Officer Oliver that the woman had committed suicide (A8, 22). Inside the room was a single bed and a dresser with a mirror that had respondent's first name on a piece of paper attached to it (A9).

Officer Oliver went to the kitchen of the apartment with his partner and asked the members of the M. family who the woman was and what had happened (A9, 26-27). At least four other police officers were also in the apartment at the time of this conversation; they were in the hallway (A27). Officer Oliver testified that "[b]ecause of the language barrier [they were] having a hard time understanding each other and from the part we did understand because [respondent] does speak English, [he] could not give me a straight answer as to who this person was. I could

not get full identification" (A9). Respondent did tell the officers that the woman's name was, "possibly, Lilly" (A9). Respondent and his father told the officers that the young woman had been staying in the apartment for "approximately a month" (A10). Respondent told the officer that the woman, whom he described as his girlfriend, had been staying in his bedroom (A14-15, 30-31). Members of the M. family also told the officer that the young woman's mother "was possibly in jail in Texas" and the young woman had previously "been staying on 135th Street. They were not sure of the exact address" (A16). The officer was trying to identify the deceased because "anytime we have a . . . dead human body, we have to try to make--we have to try [to] ascertain who this person is, to make notifications as to the family or next of kin or someone who can identify her" (A10).

After talking to the M. family for approximately five minutes regarding the identity of the young woman, Officer Oliver, "[b]eing that I could not ascertain exactly who this person was . . . re-entered the bedroom and proceeded to search for some sort of identification" (A11). Officer Oliver never testified that he asked or received permission from any member of the M. family to conduct a search of the apartment. Upon his second entry to the bedroom, Officer Oliver was accompanied by Officer Helman (A25).

The officer hoped to find "a pocketbook or some school I.D. Anything with her name, address on it" (A15). Officer Oliver went to the bedroom because "that is where that person was and I wanted to check the immediate surroundings" (A12). The officer "immediately went to the dresser drawer. The first drawer I opened which was the top left drawer. It had contained an amount of money, drugs and drug paraphernalia" (A11). The dresser drawer was closed at the time he entered the room, and he opened the drawer in order to search it (A29). Officer Oliver reported his discovery to the police sergeant, who had earlier arrived at the apartment in response to the same radio run (A11).

Officer Oliver testified he was familiar with the New York City Police Patrol Guide, which contains police department "procedures and guidelines" (A12). The part of the Guide, which was dated August 9, 1985, concerning the procedures regarding dead human bodies was received in evidence as exhibit one (A13). In chapter 106-9, under the heading DEAD HUMAN BODY--GENERAL PROCEDURE, the guide states that the purpose of the advice is "[t]o ensure that notifications to concerned authorities and relatives are properly made and recorded, evidence is preserved and proper disposition is made of dead human bodies." The guide then contains instructions for three classes of police officers--uniformed

members of the service, desk officers, and patrol supervisors. Paragraph 10 provides that the primary duty for uniformed members of the service is to prevent anyone from disturbing the body. In paragraph 19 of the instructions for patrol supervisors, the guide states: "Have body and premises searched in the presence of witnesses, 'whenever possible,' if deceased resided alone or died at a location other than residence." Officer Oliver, who was not a patrol supervisor but rather a uniformed member of the service, claimed that he followed paragraph nineteen of that section and searched the premises because the young woman "died in the location other than her residence" (A14).

Officer Oliver testified that when he re-entered the bedroom to conduct the search, he believed that what had occurred was an apparent suicide (A16-17). Detectives from the 30th Precinct were also present at the apartment that morning, but Officer Oliver testified that he was not helping them investigate the scene but rather he was "[j]ust searching for identification" (A17).

In summation at the suppression hearing, respondent's counsel argued that the evidence should be suppressed because it was discovered as a result of a warrantless search of respondent's bedroom by a police officer acting without exigent circumstances and without consent (B3-16). The prosecutor responded that the

police action was an appropriate administrative or inventory search, not a search to discover evidence of a crime(B17-20).

On December 5, 1996, the Family Court issued a written decision denying the motion to suppress. The Family Court agreed with the prosecution that the search of the bedroom was a proper inventory search, and the court also ruled that respondent's parents consented to the search (Decision at 2). According to the Family Court, the police may legally conduct a warrantless inventory search of a private residence so long as the motive for the search is not to discover evidence of a crime (Decision at 2-4). Despite the fact that the prosecution did not rely on a consent theory and never offered any evidence that Officer Oliver received consent from anyone to search respondent's bedroom, the Family Court nevertheless found that respondent's parents consented to that search because "[t]hey notified the police when they discovered a dead body in their son's room and sought police assistance in their home to deal with the situation" (Decision at 4). According to the Family Court, the police search of closed drawers in respondent's bedroom was no greater an intrusion than the legitimate police presence in the home (Decision at 4).

At the subsequent fact-finding hearing, the prosecution introduced the evidence obtained as a result of the police search

of the respondent's closed bedroom dresser drawer. That evidence included $277 in cash, 98 empty crack vials, 19 small plastic bags containing crack cocaine, shotgun shells, and a handwritten note. At the conclusion of the fact-finding hearing on January 24, 1997, the Family Court found that the respondent committed the delinquent acts of criminal possession of a controlled substance in the third, fifth (two counts), and seventh degrees, and of criminally using drug paraphernalia in the second degree. On February 3, 1997, the Family Court adjudicated the respondent a juvenile delinquent and placed him with the New York State Division for Youth for a period of fifteen months.

The respondent appealed to the Appellate Division, First Department, arguing that the police search of the closed bedroom dresser drawer had been illegal and that all the evidence obtained as a result of the search should be suppressed. In a decision issued October 28, 1999, the First Department reversed the Family Court and granted the motion to suppress. In re Erik M., 265 A.D.2d 256, 697 N.Y.S.2d 35 (1st Dept. 1999). The court held as follows:

> It is a basic tenet of constitutional law that, absent a search warrant, a search is unreasonable unless it falls within one of the specifically recognized exceptions to the warrant requirement. (People v. Hodge,

> 44 N.Y.2d 557). The presentment agency argues that the police conduct in this case falls within the scope of one of those exceptions, namely, that it was a permissible administrative search. We cannot agree.
>
> The search at issue in this case, which was rooted in the investigation of the apparent suicide of a young woman, does not fall within the parameters of the exception permitting warrantless searches for administrative purposes (see, New York v. Burger, 482 U.S. 691; Donovan v. Dewey, 452 U.S. 594; Camara v. Municipal Court of San Francisco, 387 U.S. 523). Nor can it be said that there was any exigency justifying a warrantless search since the police could easily have secured the apartment and obtained a warrant. Additionally, contrary to the conclusion of the Family Court, this search did not fall within the parameters of a valid inventory search (see, Illinois v. Lafayette, 462 U.S. 640; South Dakota v. Opperman, 428 U.S. 364).
>
> Accordingly, since the presentment agency has failed to demonstrate that the search in this case fell within any recognized exception to the warrant requirement, suppression of the items found in appellant's dresser drawer is mandated.

265 A.D.2d at 256-57; 697 N.Y.S.2d at 36-37.

On December 2, 1999, the appellant filed a notice of appeal to the New York Court of Appeals from the First Department's October 28, 1999, order, claiming that it had an appeal as of right. On February 22, 2000, the New York Court of Appeals

dismissed the appellant's appeal upon the ground that it did not present a substantial constitutional question. On April 4, 2000, the prosecution filed, in the Appellate Division, First Department, a motion for leave to appeal to the New York Court of Appeals the First Department's October 28, 1999, order. On May 25, 2000, the First Department denied the appellant's motion for leave to appeal. On June 15, 2000, the appellant filed, in the New York Court of Appeals, a motion for leave to appeal the First Department's October 28, 1999, order. On September 5, 2000, the New York Court of Appeals denied the appellant's motion for leave to appeal. On November 8, 2000, the appellant filed a petition for writ of certiorari in this Court, requesting review of the order of the New York State Supreme Court, Appellate Division, First Department.

ARGUMENT

This Court's rules provide that it will consider granting review on certiorari where "a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." Sup. Ct. R. 10(b). In its petition, however, the City of New York fails to cite even one decision of another state or federal court that conflicts with the holding of the New York State Supreme Court, Appellate Division, First

Department, in this case, and the respondent is also unaware of any such conflicting decisions. Thus certiorari is not warranted by any split of opinion in the lower courts.

This Court's rules also provide that certiorari review may be appropriate where "a state court . . . has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). This Court has settled in Flippo v. West Virginia, 528 U.S. 11, 13-15 (1999), Thompson v. Louisiana, 469 U.S. 17, 18-23 (1984), and Mincey v. Arizona, 437 U.S. 385, 389-95 (1978), the question of whether under the Fourth Amendment the police may make a warrantless search of a home where a dead body has been discovered. Those cases all held that, absent a warrant or consent, such searches violated the Constitution. In the present case, the police did not attempt to obtain a warrant, nor did the police even ask any member of the respondent's family for consent to search the home. Thus, the New York State Supreme Court Appellate Division merely applied well settled constitutional principles to the facts of this case.

In addition, the search violated the New York City Police Department's Patrol Guide in that the officer who conducted the

search, Officer Oliver, was a uniformed member of the service who, according to the patrol guide, was to do no more than prevent anyone from disturbing the body. Only a patrol supervisor, according to the guidelines, had the authority to authorize a search. Thus Officer Oliver's search not only violated the Constitution but also the police department's own rules.

The appellant relies on cases upholding police inventory searches of cars and bags that are lawfully in police custody. The search in the present case, however, did not involve a lawfully seized car or bag but rather concerned a search of an area entitled to the highest level of constitutional protection — a closed dresser drawer in the respondent's bedroom — a place for which no court has ever authorized a warrantless "administrative" search. In fact, this Court has held that routine inspections of homes to determine whether any health or safety laws are being violated are not allowed without the issuance of a warrant. Camara v. Municipal Court, 387 U.S. 523, 534 (1967). Warrantless administrative or inventory searches of the home — as opposed to cars or containers carried by arrestees — are plainly unconstitutional. The New York State Supreme Court Appellate Division correctly applied this Court's precedents. This case, consequently, does not warrant certiorari review.

CONCLUSION

For the reasons stated above, respondent respectfully requests this Court to deny the petition for writ of certiorari.

Respectfully submitted,

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Raymond E. Rogers

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December 20, 2000